IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3351 OF 2004
WITH
CRIMINAL APPLICATION NO.3352 OF 2004

Omkar Singh Sajjan Singh Jat @ Angrej ...Applicant
(In both the Applications)

Vs.
Sr. P.I., D.C.B. C.I.D. & Anr. ...Respondents
(In both the Applications)

Shri. H.K. Prem for the Applicant.
Shri. A.S. Gadkari, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : AUGUST 05, 2005.

JUDGMENT:

1. On the last date the Applications were heard fully and as time was not sufficient, Applications were kept today for dictation of judgment.

2. At the outset on the last date, the learned Public Prosecutor pointed out the reasons why the concerned Officer could not attend the Court when the Applications were heard for admission and could not give instructions to the learned Public Prosecutor. He has placed relevant material in support of the explanation for my perusal. I am satisfied that there is no lapse on the part of the concerned Officer and hence, no further action is called for in that behalf.

3. In both the Applications, by the order impugned, the Application for discharge filed by the Applicant has been rejected by the Sessions Court.

4. In Criminal Application No.3351 of 2004, the Applicant who is a co-accused is facing a prosecution for offences under sections 395, 114, 411 and 414 of the Indian Penal Code. The F.I.R. is filed on 20th March, 1993 by the first informant Deepak kumar Vasudev Joshi. The case made out in the F.I.R. is that the first informant was working as a delivery man with one Angadia Company. On the relevant date, he was entrusted by his employer one briefcase containing sealed packets of valuables like diamonds. His colleague Vishnu Patel was entrusted a cloth bag containing sealed packets of valuables and another colleague Girish Patel was also entrusted a cloth bag containing sealed packets of valuables.

5. The first informant and his colleagues reached Malad Railway Station and started walking towards the Malad Office of their employeer. At about 09.30 hours, when they reached northern side gate of ‘Shukra Building’, Goshala Lane, Malad (E), the first informant noticed a white coloured Maruti Gipsy parked near the northern gate of the said ‘Shukra Building’. At that time one person rushed towards him from front side and the said person caught hold of his shirt and he took out a revolver and kept it on his head. The first informant started defending himself. Then he noticed that another person got down from the Maruti

Gipsy and rushed towards him. The other person was armed with chopper who gave a blow by the chopper on his left hand shoulder and his head. In the meanwhile, person carrying revolver successfully snatched the briefcase from his hand. When the first informant shouted for help, he found other two persons armed with choppers were snatching the bags from the hands of his colleagues Girish and Vishnu. They successfully snatched the bags of all of them, sat in said Maruti Gipsy and ran away towards highway side. The first informant gave registration number of the Maruti Gipsy as MH04.4826.

6. In so far as Criminal Application No.3352 of 2004 is concerned, the offence has been allegedly committed on 22nd February, 1993. The first informant claims to be a manager working with an Angadia. He stated that one of the branches of his employer is at Malad. He had brought certain cash to the said branch from the Head Office for the purposes of handing over the same to certain merchants. At about 01.15 p.m. the Maruti Gipsy came in front of the shop and four unknown persons entered the shop. Two of them were carrying revolvers and two others were carrying choppers. By showing the choppers and revolvers, the first informant and other persons were forced to open the safe in the shop and the accused took away the cash and three or four parcels in the shop. They

disconnected telephone and by sitting in the Maruti Gipsy, they left the shop. The first informant in the said case has not disclosed the registration number of the Maruti Gipsy.

7. The learned Advocate for the Applicant submitted that the Applicant is not identified either by the first informants in both the cases or by any witness in the Test Identification Parade. The only incriminating material against the Applicant is a statement of one Harvindarsingh Sadhusingh Bandi who is the brother-in-law of the Applicant. He pointed out that the said statement pertains to Maruti Gipsy bearing registration No.MH02.8815 which is not the vehicle described in the F.I.R. which is the subject matter of Criminal Application No.3351 of 2004 and there is nothing in the said statement to connect the Applicant with the offence. He submitted that there is absolutely no material on record for proceeding against the Applicant. He submitted that the only material available against the Applicant in both the cases is the statement of Harvindarsingh Sadhusingh Bandi.

8. The learned Public Prosecutor fairly stated that none of the witnesses have identified the Applicant in the Test Identification Parade and save and except the identical statements of the

Harvindarsingh Bandi in both the cases, there is no other material available against the Applicant. The learned Public Prosecutor submitted that there is every possibility that the first informant may have committed a mistake in giving registration number of the Maruti Gipsy involved in the offence. He submitted that the guilt of the Accused can be established after the prosecution is permitted to lead evidence and no case is made out for discharge.

9. I have considered the rival submissions. It is an accepted position that none of the witnesses have identified the Applicant in Test Identification Parades and it appears that other four accused have been identified. In both cases, in the First Information Report, it is disclosed that only four accused were present at the place where offences have been allegedly committed. As it is an agreed position that save and except the identical statements of Harvindarsingh Bandi in both cases, there is no material available against the Applicant, it is necessary to refer to the said statement. The said Harvindarsingh Bandi has stated that he had agreed to purchase the Maruti Gipsy bearing registration No. MH02.J.8815 in the last week of January, 1993 and he had taken the possession of the said vehicle by paying advance of Rs.65,000/- to one Shri. Sanesh Patil out of the total agreed consideration of Rs.1,30,000/-.

He stated that he returned said vehicle to Sanesh Patil after two months. He stated that the vehicle was being driven by the Applicant who is his brother-in-law and the Applicant was using said vehicle intermittently. He further stated in the statement that he was informed that same Maruti Gipsy has been used by the Applicant in the two offences and he was not aware of the said two offences.

10. It is pertinent to note that here that the vehicle number stated by the said Harvindarsingh is different from the vehicle number stated by the first informant in the first case. In the second case, the first informant has not disclosed the vehicle number. Harvindarsingh has not stated that according to his personal knowledge, the Applicant has used his vehicle in the offences in question. All that he says is that he has learnt or that he is informed that the Applicant has used said vehicle in offences and he stated that he was not aware about use of said vehicle by the Applicant in the said two offences. He has stated that when he was in possession of the vehicle, the Applicant used to drive the said vehicle and used it intermittently. Even if the said statement is accepted as true and correct, the said statement does not connect the Applicant in any manner with both the offences. While rejecting the prayer for discharge made by the Applicant, the learned Judge has observed

that in the disclosure statement of the accused No.1 Jagdish Shetty, he stated that the present Applicant was with them at the time of offence. The said disclosure statement obviously cannot be read in evidence in so far as the same purports to implicate the Applicant as an accused. Moreover, perusal of the said statement shows that the name of the Applicant is not disclosed in the said statement.

11. Thus, the sum and substance of discussion is that there is absolutely no material on record to connect the Applicant with both the offences. At highest the material gives rise to some suspicion but not a grave suspicion against the Applicant. It is very difficult to hold that prima facie case is made out against the Applicant. In view of this position, the Applications must succeed and the same are allowed in terms of prayer clause (a).

12. It is made clear that the observations which are made in this judgment are for limited purpose of consideration of the Revision Applications.

JUDGE